

Table of Contents



Preface	xiii
Thanks	xv
Acknowledgments	xvi
CHAPTER 1 Law, Ethics, Business: An Introduction	1
Freedom versus Responsibility: A Duty to Rescue?	3
<i>Yania v. Bigan</i>	3
Justifying the “No Duty to Rescue” Rule	4
■ John Stuart Mill, “On Liberty”	5
Radical Change?	5
■ Steven J. Heyman, “The Duty to Rescue: A Liberal-Communitarian Approach”	6
■ When Rescue Is Required	8
Ethical Decision Making: A Toolkit	9
Ethics and the Gulf Oil Spill of 2010	9
Free Market Ethics	11
Utilitarianism: Assessing Consequences	14
Deontology: Rights and Duties	17
Virtue Ethics: Habits of Goodness	20
Ethic of Care	24
Why Ethical Theory?	29
Corporate Governance	30
■ Corporate Roles, Rights, and Responsibilities	30
Corporations, Public Policy, and Money	31
<i>Citizens United v. Federal Election Commission</i>	32
Corporate Social Responsibility as Strategy	36
■ Michael Porter and Mark R. Kramer, “Strategy & Society: The Link Between Competitive Advantage and Corporate Social Responsibility”	37
Chapter Problems	41
Chapter Project—Walking the Talk?	44
CHAPTER 2 The Duty of Loyalty: Whistleblowing	46
<i>Donn Milton, Dr., v. IIT Research Institute</i>	47
Employment-at-Will	49
Exceptions to the Rule	49
■ Federal Whistleblower Protection Laws	50
Conflicting Loyalties: Whistleblowing and Professional Ethics	52
<i>Pierce v. Ortho Pharmaceutical Corp.</i>	53
<i>Montana: Wrongful Discharge From Employment Act</i>	58
Valuing Work	59
■ Marion Crain, “Work Matters”	59

Sarbanes-Oxley and the Corporate Whistleblower 62

- Leonard M. Baynes, *"Just Pucker and Blow: An Analysis of Corporate Whistleblowers"* 63
- *Group Think* 66

Public Employees and Freedom of Speech 66

- Garcetti v. Ceballos* 68

False Claims Act: Qui Tam Whistleblowers 72

Qui Tam and Fraud in Health Care 73

- *Experiences of Qui Tam Whistleblowers Against the Pharmaceutical Industry* 73

Global Norms and Internal Corporate Communication 74

- Terry Morehead Dworkin, *"Whistleblowing, MNCS, and Peace"* 75

Chapter Problems 79**Chapter Project—Stakeholder Ethics Role Play 82****CHAPTER 3 Privacy and Technology 84****Surveillance at Work 85**

E-mail Interception 85

- Michael A. Smyth v. The Pillsbury Company* 85

Electronic Surveillance: The Debate 87

- *Survey Data Shows Increasing Workplace Surveillance* 87

Electronic Surveillance: The Law 89

The Value of Privacy 89

- Alan Westin, *"The Functions of Privacy"* 90

Lifestyle Control 93

- State of New York v. Walmart Stores, Inc.* 95

Testing 96

- Karraker v. Rent-a-Center, Inc.* 97

- *Impairment Testing vs. Drug Testing* 101

Social Media and Privacy 102

- *Complaint re. Facebook to Federal Trade Commission* 103

- *Europe vs. America: Dignity vs. Liberty* 107

Privacy Under the Constitution 108

- City of Ontario, California v. Quon* 109

Privacy in Genetic Information 113

- Norman-Bloodsaw v. Lawrence Berkeley Laboratory* 113

A Comprehensive Federal Statutory Response 116

- *Genetic Information Nondiscrimination Act of 2008* 117

Chapter Problems 120**Chapter Project—Collaborative Exercise:**

Writing a Model Corporate Privacy Policy 123

CHAPTER 4 Valuing Diversity: Stereotyping vs. Inclusion 125

- Goodridge v. Department of Public Health* 126

Equal Protection 130

- Lozano v. City of Hazleton* 131

- *Is the U.S. "Post-Racial"?* 133

The Civil Rights Act Of 1964 134

Affirmative Action 134

Religion 135

Webb v. City of Philadelphia 135

National Origin 137

■ EEOC Guideline on English-Only Workplace Rules 138

Maldonado v. City of Altus 138

Sex Discrimination 142

■ Highlights in the Evolving Laws of Sex Discrimination 142

■ Vicki Schultz, "The Sanitized Workplace" 146

Oiler v. Winn-Dixie Louisiana, Inc. 148**Work/Life Balance 150**

Legislating Family Leave 151

Family and Medical Leave Act 152*Chadwick v. Wellpoint, Inc.* 154**Reasonable Accommodation of Disabled Workers 156***Equal Opportunity For Individuals with Disabilities (Americans with Disabilities Act)* 157

■ Michael E. Waterstone and Michael Ashley Stein, "Disabling Prejudice" 159

Chapter Problems 161**Chapter Project—Alternative Dispute Resolution: Cyberbullying 164****CHAPTER 5 Workers' Rights as Human Rights: Health and Safety in the Workplace 166****Confronting Risk in the Work Environment: The WTC Cleanup 167***Lombardi v. Whitman* 167

■ High Risk Industries: Mining Disaster Testimony 170

Occupational Safety and Health Administration (OSHA) 173*Chao v. Occupational Safety and Health Review Commission* 176**Perspectives on Risk in the Workplace 180***Echazabal v. Chevron USA, Inc.* 180

■ The State of Workers' Safety and Health 183

Corporate Criminal Liability 183**Compensation for Workplace Injury and Illness 184***Madeira v. Affordable Housing Foundation, Inc.* 185**Safety Concerns in the Global Economy 187**

Twenty-First Century Slavery 188

■ Interview with Kevin Bales, "Slavery: Alive and Thriving in the World Today" 188

The International Battle Against Sweatshop Labor 192

Kasky v. Nike 192

Exporting Hazards 195

■ Henry Shue, "Exporting Hazards" 195

Chapter Problems 197**Chapter Project—Legislative Hearing: Reforming OSHA 201**

CHAPTER 6	Global Climate Change: Responsibility and Survival	202
	<i>Native Village of Kivalina v. Exxonmobil Corporation, et al.</i>	203
	Environmental Regulation and the New Environmental Challenge	206
	■ U.S. Environmental Protection Statutes	207
	Environmentalists, Scientists, Energy Interests: The Political Dance	209
	■ Judith Layzer, "Deep Freeze: How Business Has Shaped the Global Warming Debate in Congress"	210
	■ Assessing the Costs of Climate Change	214
	Ethics & the U.S. Response to Climate Change	215
	■ John Holland, "The U.S. and Its Climate Change Policy: Advocating an Alignment of National Interest and Ethical Obligations"	215
	Corporate Social Responsibility: A Market for Virtue?	219
	■ David Vogel, "The Market for Virtue"	220
	■ Green Taxes, Green Rules	222
	Corporate Governance: Shareholder Activism	223
	■ Thomas Joo, "Global Warming and the Management-Centered Corporation"	225
	Philosophical Perspectives	228
	■ John Locke, "Second Treatise of Government"	228
	■ Instrumentalism vs. Deep Ecology	230
	Biodiversity and Habitat Preservation	230
	Private Property, Regulation, and the Constitution	230
	<i>Lucas v. South Carolina Coastal Council</i>	232
	■ Environmental Justice	236
	Chapter Problems	237
	Chapter Project—Business Ethics Fairy Tales	240
CHAPTER 7	Marketing and Technology: Choice and Manipulation	242
	Free Speech and Commercial Speech	243
	<i>IMS Health Inc. v. Kelly A. Ayotte, New Hampshire Attorney General</i>	244
	■ Native Americans and Malt Liquor Advertising	248
	Advertising and Economics	249
	■ John Kenneth Galbraith, "The Dependence Effect"	250
	Federal versus Industry Self-Regulation	253
	The Federal Trade Commission	253
	<i>FTC v. Silueta Distributors, Inc. and Stanley Klavir</i>	255
	Lanham Act	258
	<i>Pharmacia Corporation v. Glaxosmithkline Consumer Healthcare</i>	259
	Industry Self-Regulation and Marketing to Children	261
	■ Standards of Practice	261
	Children, Obesity, and Marketing Junk Food	262
	■ Juliet B. Schor and Margaret Ford, "From Tastes Great To Cool: Children's Food Marketing and the Rise of the Symbolic"	263
	■ The Tobacco Story	269

	Direct-to-Consumer Pharmaceutical Advertising	271
	<i>Saray Perez v. Wyeth Laboratories Inc.</i>	271
	The Branding of Culture	275
	■ Naomi Klein, “No Logo”	275
	Chapter Problems	277
	Chapter Project—Children’s Web Site Analysis	281
CHAPTER 8	Allocating Risk and Responsibilities: Products Liability	282
	<i>Wyeth v. Levine</i>	283
	Risk Made Transparent—Or Information Overkill?	286
	Government Regulation of Product Safety	287
	Food and Drug Administration (FDA)	287
	The Consumer Product Safety Commission (CPSC)	288
	■ <i>Importing Lead-Painted Toys</i>	289
	National Highway Traffic Safety Administration (NHTSA)	290
	<i>Weimer v. Toyota Motor North America, Inc.</i>	291
	■ Elizabeth J. Cabraser, “Apportioning Due Process: Preserving the Right to Affordable Justice”	294
	■ Victor E. Schwartz, Sherman Joyce, and Cary Silverman, “Why businesses Fear Litigating in State Courts”	297
	Evolution of Products Liability Law	299
	The Tort of Strict Product Liability	300
	■ <i>Restatement of Torts (Second) Section 402A</i>	301
	Punitive Damages	302
	■ <i>The Ford Pinto Case</i>	302
	Contract Law	304
	Breach of Warranty and the Uniform Commercial Code	304
	<i>Transport Corporation of American v. IBM</i>	305
	Contract Law and Tort Law	306
	<i>Denny v. Ford Motor Company</i>	307
	An Alternative Approach	309
	■ Stephen D. Sugarman, “Performance-Based Regulation”	310
	Chapter Problems	312
	Chapter Project—Legislative Activism	315
CHAPTER 9	Ownership, Creativity, and Innovation: Intellectual Property	316
	Copyright	317
	<i>Bridgeport Music, Inc. v. UMG Recordings, Inc.</i>	318
	Online Piracy or Culture Jamming?	320
	■ Debora Halbert, “Feminist Interpretations of Intellectual Property”	321
	Traditional Copyright Law	322
	■ <i>U.S. Copyright Law Highlights</i>	323
	Fair Use	323
	<i>Sony BMG Music Entertainment v. Tenenbaum</i>	324

Joint Copyrights and Collective Rights 330

Public Domain 330

 ■ Lawrence Lessig, “The Creative Commons” 330

Digital Millennium Copyright Act 333

Universal City Studios, Inc. v. Eric Corley 334

 ■ A Digital Library for the World? 337

Beyond Copyright: Misappropriation, Trademark, Patents, and Trade Secrets 338

White v. Samsung and Deutsch Associates 338

Trademarks 341

Patents 342

In re Bilski 343

Trade Secret 347

Pepsico, Inc. v. Redmond 348

Global Intellectual Property Rights (IPR) 350

 ■ Gelvina Rodriguez Stevenson, “Trade Secrets: Protecting Indigenous Ethnobiological (Medicinal) Knowledge” 350

 ■ Highlights in the Development of International IPR 354

Human Rights and IP 354

 ■ Statement on Human Rights, Human Dignity and the Information Society 355

Chapter Problems 357

Chapter Project—Ethics Roundtable: Protecting Collective Property 359

Appendices 361

A How to Read and Brief a Case 361

B An Introduction to Legal Research 365

C Evaluating Internet Sources 371

D Stakeholder Ethics Role Play 373

E Alternative Dispute Resolution 375

F Legislative Hearing 378

Glossary 380

Index 389